

Huser 4/2/03 page 1

00001

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 - - -
4 EASTSIDE LINCOLN MERCURY, ET AL,)
5)
6 PLAINTIFFS,)
7)
8 VS) CASE NO: 01CV00567
9)
10 FORD MOTOR COMPANY, ET AL,)
11)
12 DEFENDANTS.)
13 -----
14
15
16
17
18
19
20
21
22

9

10

11

12 DEPOSITION OF: ROBERT B. HUSER

13 CINCINNATI, OHIO

14 APRIL 2, 2003

15

16

17

18

19

20

21

22

23 REPORTER: JILL M. DRAGON SANDY
24 Dragon Reporting Service
25 5551 Seville Court
Cincinnati, Ohio 45247
(513)574-8319

00002

1 The deposition of ROBERT B. HUSER, taken on
2 discovery, pursuant to agreement of counsel as to time and
3 place, in the offices of Rendigs, Fry, Kiely & Dennis, Suite
4 900, One West Fourth Street, Cincinnati, Ohio, on April 2,
5 2003, at 2:00 PM, upon oral examination, and to be used in
6 accordance with the Ohio Rules of Civil Procedure.

7 - - -

8

9

10 S T I P U L A T I O N S

11 It is stipulated by and between counsel for the
12 representative parties that the deposition of ROBERT B.
13 HUSER, the witness herein, may be taken at this time and
14 place pursuant to the Ohio Rules of Civil Procedure,
15 pursuant to agreement of counsel as to time and place; that
16 the proof of the notary is waived; that the deposition may
17 be recorded in stenotypy by the notary public, Jill M.
18 Dragon Sandy, who is also the court reporter, and
19 transcribed out of the presence of the witness, and that the
20 deposition is required to be submitted to the witness for
21 his examination and signature.

22 - - -

23

24

25

Huser 4/2/03 page 3

00003

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS:

4 Mr. Gregory J. Berberich
and

5 Mr. Lawrence A. Flemer
Statman, Harris, Siegel & Eyrich

6 2900 Chemed Center
255 East Fifth Street

7 Cincinnati, Ohio 45202
(513)621-2666

8

9

10 FOR THE DEFENDANTS:

11 Mr. Steven D. Hengehold
Rendigs, Fry, Kiely & Dennis
12 Suite 900

One West Fourth Street
13 Cincinnati, Ohio 45202-3688
(513)381-9221

14

15 Mr. Gregory Smith
Baker & Hostetler
16 Capitol Square, Suite 2100
65 East State Street
17 Columbus, Ohio 43215-4260
(614)462-2651

18

19 ALSO PRESENT:

20 Mr. James Woodall

21

22

23

24

25

Huser 4/2/03 page 4

00004

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

CROSS-EXAMINATION BY:

MR. FLEMER

PAGES 5 - 78

E X H I B I T I N D E X

(None)

00005

1 ROBERT B. HUSER,
2 called on behalf of the plaintiff, after having been
3 first duly sworn, was examined and deposed as follows:

4 C R O S S - E X A M I N A T I O N

5 BY MR. FLEMER:

6 Q. Mr. Huser, my name is Larry Flemer, and
7 I represent Eastside Lincoln Mercury and Bill Woeste in a
8 lawsuit that's the reason that we're here today.
9 I'm going to be taking your deposition,
10 which is a process whereby I'll ask you a series of
11 questions to see if you have knowledge about some of the
12 issues in the case.

13 A. Okay.

14 Q. And I don't know, have you ever had a
15 deposition before?

16 A. No.

17 Q. Well, I'm sure Mr. Hengehold has given
18 you kind of an outline of how it works. But just to review
19 with you, it's important, a couple of things, that you
20 remember, No. 1, that you give a verbal answer to any of the
21 questions that are asked and try to answer with words as
22 opposed to "uh-huh" or "huh-uh." Secondly, if you don't
23 understand my question, or some portion of it, please tell
24 me and I'll rephrase it to make it clear to you.

25 A. Okay.

00006

1 Q. Everything that we're saying here is
2 going to be taken down and transcribed and become part of
3 the case record, so it's important that we be accurate. And
4 I'll assume that if you've answered one of my questions
5 without asking for clarification, that you understood it.
6 Okay?

7 A. Okay.

8 Q. All right. If you need to take a break
9 at some point, let me know.

10 A. Okay.

11 Q. And the only other thing that I ask is
12 that you try to not begin your answer until I have finished
13 my question, and I'll, likewise, not start the next question
14 until you've finished your answer. Okay?

15 A. Very good.

16 Q. All right. Can you state your full name
17 and give us your residence address?

18 A. Robert B. Huser, 7242 Crinstead,
19 C-R-I-N-S-T-E-A-D, Cincinnati, 45243.

20 Q. How old are you?

21 A. Forty.

22 Q. Date of birth?

23 A. 6/20/62.

24 Q. Are you married?

25 A. Yes.

00007

1 Q. Your wife's name?
2 A. Gail.
3 Q. Do you have any children?
4 A. Two.
5 Q. And their names and ages?
6 A. Nicole, seven; Amanda, four.
7 Q. What part of town do you live in?
8 A. Madeira.
9 Q. Can you give us an outline of your
10 educational background?
11 A. The University of Cincinnati.
12 Q. Did you obtain a degree?
13 A. Degree in business administration.
14 Q. What year?
15 A. 1983.
16 Q. And any school after your undergraduate
17 degree?
18 A. No.
19 Q. Did you start to work after graduation?
20 A. Yes.
21 Q. Can you outline your work history for
22 me, beginning with your first job out of college?
23 A. Tom Sweeney Nissan, Grueninger
24 Oldsmobile GMC.
25 Q. Slow down a little. I'm going to give

00008

1 you a chance to tell me a little bit about each position
2 before we go on to the next one.

3 A. Okay.

4 Q. What period of time did you work at Tom
5 Sweeney?

6 A. 1984, for a year.

7 Q. What did you do there?

8 A. Sales.

9 Q. New and used cars?

10 A. Yes.

11 Q. And where did you go after that?

12 A. Grueninger Oldsmobile GMC.

13 Q. What position?

14 A. First sales and then finance manager.

15 Q. How long were you there?

16 A. About three years.

17 Q. So that would be roughly until about

18 1988?

19 A. Correct.

20 Q. Where did you go after that?

21 A. Flerlage Marine.

22 Q. F-L-E-R-L-A-G-E?

23 A. That's correct.

24 Q. What did you do there?

25 A. Finance manager.

00009

1 Q. And what period of time did you work at
2 Flerlage?
3 A. About a year and a half, just short of
4 '90.
5 Q. Where did you work after that?
6 A. Jupiter Dodge.
7 Q. Where are they located?
8 A. Jupiter, Florida.
9 Q. What period of time did you work there?
10 A. I was only there for about a year.
11 Q. So roughly 1990, '91?
12 A. Yes.
13 Q. What position did you hold there?
14 A. Finance manager.
15 Q. And after that?
16 A. Cronin Lincoln Mercury Volkswagen, until
17 April of '92.
18 Q. I'm going to guess, finance manager?
19 A. Correct.
20 Q. And after that?
21 A. Mercedes Benz of Cincinnati.
22 Q. And what period of time were you at the
23 Mercedes dealership?
24 A. Until January of 2000. Sales manager.
25 Q. Was that new and used cars?

00010

1 A. Yes.

2 Q. And what happened in January of 2000?

3 A. I left there and started working for Bob
4 Reichert in February of 2000.

5 Q. What position did you take with

6 Mr. Reichert's group?

7 A. General manager.

8 Q. That would be at the Fairfield Lincoln

9 Mercury store?

10 A. Correct.

11 Q. And that's your current position; is it
12 not?

13 A. That's correct.

14 Q. Have you had any training along the
15 route of your career path, in connection with any of the
16 positions you've held, formal training?

17 A. Some F&I schools, Ryan Institute's F&I
18 school, which is a two-week school in Chicago; the Oak
19 Agency, also in Chicago.

20 Q. The first word is "the," the second word
21 is "oak?"

22 A. Yes, correct.

23 Q. They're both finance schools?

24 A. Both finance schools, uh-huh.

25 Q. And they're both in the Chicago area?

00011

1 A. Correct.

2 Q. When did you receive training there, at
3 either one of those?

4 A. That would be back in the late '80s.
5 I can't remember the exact dates, but probably '86, '87,
6 '88, somewhere in there.

7 Q. And the training from the Oak Agency,
8 was that also a two-week program?

9 A. No, that was about four days.

10 Q. Any other formal training?

11 A. No.

12 Q. So you've had no training as a -- from
13 an operational standpoint, dealer operations or anything
14 like that?

15 A. Formal training, correct.

16 Q. Okay. Have you attended any program
17 sponsored by Ford Motor/Lincoln Mercury Division?

18 A. Yes, their new dealer orientation.

19 Q. And when did that occur?

20 A. I believe it was April or May of 2000.

21 Q. And would that have coincided with the
22 acquisition by Mr. Reichert of the Fairfield store?

23 A. It was a little after that.

24 Q. Was that about a one-week program up in
25 Dearborn?

00012

1 A. Yes.

2 Q. Were you involved, in any respect, with
3 Mr. Reichert's acquisition of Fairfield Lincoln Mercury?

4 A. No.

5 Q. Did you know anything about it, even
6 though you weren't part of it?

7 A. Limited.

8 Q. Tell me what you know about how he came
9 to own the dealership.

10 A. I --

11 Q. It was previously operated by another
12 company; is that right?

13 A. Correct. Correct.

14 Q. Tell me what you know. I interrupted
15 you, I'm sorry.

16 A. I was hired in February 2000, to be the
17 general manager of a store that I didn't even know the name
18 of.

19 Q. How did you come into contact with the
20 opportunity?

21 A. Rick Roselle, from Agency Services, he's
22 an F&I trainer, and I had a -- I knew Rick, we did business
23 with him at Mercedes Benz of Cincinnati, and he got me an
24 interview with Mr. Reichert.

25 Q. Did Mr. Reichert explain to you, at that

00013

1 time, anything about how he acquired the dealership?

2 A. No.

3 Q. Do you know who operated it before he
4 did?

5 A. Yes.

6 Q. Who was that?

7 A. Jim Dixon.

8 Q. Okay. And at the time Mr. Reichert
9 acquired it, was it strictly a Lincoln Mercury dealership --

10 A. Correct.

11 Q. -- or was there another brand involved?

12 A. Just Lincoln Mercury.

13 Q. Did Mr. Reichert subsequently get
14 approval from Ford to dual that dealership?

15 A. Yes.

16 Q. When I say Ford in this deposition, I
17 mean to refer to the Lincoln Mercury Division.

18 A. Right.

19 Q. Were you involved with his efforts to
20 get permission from Ford to dual?

21 A. Limited.

22 Q. Do you know how that took place?

23 A. No, I really don't.

24 Q. Is it your opinion that having a dual
25 dealership is beneficial to Mr. Reichert and the Kenwood

00014

1 Dealer Group?

2 A. Yes, in some ways.

3 Q. Can you tell me how it's beneficial?

4 A. It's easier for me to run both locations
5 being under one, well, one roof but two showrooms. There's
6 a few synergies, as far as employees, very few, but a few.

7 Q. Can you explain those to me, or just
8 list them for me?

9 A. Office personnel, at the other store I
10 had four, this one I have six.

11 Q. So you have a little more manpower, so
12 to speak?

13 A. Yes. A little less than you would have
14 if you had two, not by -- actually by about maybe four or
15 five employees.

16 Q. So you have a few more employees but
17 they cover a wider area; is that right?

18 A. Correct.

19 Q. Okay. What other synergies, as you
20 described them, would you identify there?

21 A. Besides the fact that it's easier for me
22 to run a store that I'm in all the time, there's, there's
23 very little other --

24 Q. Are there any economies that would be
25 associated with the physical facilities themselves?

00015

1 A. Very little.

2 Q. Would you be able to give me any

3 examples on that?

4 A. Rent factor.

5 Q. Okay. Spread the rent across both

6 dealerships?

7 A. Correct.

8 Q. Okay.

9 A. But the facility had to be redone, so
10 the rent went up at the facility that we're at.

11 Q. Okay.

12 A. So you don't have the entire savings of
13 the other store.

14 Q. You would if you owned the property,
15 right, and you weren't paying rent?

16 A. Yes.

17 Q. Okay. Any other economies of scale or
18 financial savings that you can identify as a consequence of
19 dualing?

20 A. My salary, what I make, you have one of
21 me instead of two.

22 Q. All right. You mean they don't pay you
23 double?

24 A. I wish they did, but --

25 Q. You have to ask.

00016

1 Are there any other personnel who also
2 represent a savings to the dealer group, apart from
3 yourself, where you can have one person doing two jobs, so
4 to speak?

5 A. Yes.

6 Q. Who would those be?

7 A. The service manager and the parts
8 manager. But on the other hand, I then had to have an
9 assistant parts manager and assistant service manager
10 because it was too big for one person to handle.

11 Q. Okay. But you have one service manager
12 that supervises the servicing of both brands?

13 A. Correct.

14 Q. And the same for the parts?

15 A. Correct.

16 Q. But each of them needs an assistant?

17 A. Correct.

18 Q. Can't you get them to work any harder?

19 A. They're already working pretty hard.

20 Q. Are there any other individuals where
21 that duality would result in some savings?

22 A. No.

23 Q. Or other positions, I guess I should
24 say?

25 A. No. We have separate sales managers,

00017

1 two F&I. Everything where we had one, we now have two.

2 Q. Is it your belief, Mr. Huser, that
3 having that dual status up there is beneficial to the dealer
4 group, above and beyond the savings we've already talked
5 about?

6 A. No.

7 Q. Do you think it helps them make any more
8 money or sell any more cars?

9 A. No.

10 Q. Do you think it does the opposite? Does
11 it impact in a negative way?

12 A. In the beginning, yes.

13 Q. How so?

14 A. Well, in the beginning, when we
15 originally dualled, everybody was in the same showroom. And
16 since we separated the two, it has been a factor.

17 Q. How long did that original phase exist
18 or go on, where you were all in one facility?

19 A. From June to January.

20 Q. So there was six months of what, real
21 problems?

22 A. No.

23 Q. Seven months, or whatever it would be?

24 A. No.

25 Q. How was it difficult to be in one

00018

1 facility?

2 A. Well, if you have the same sales force
3 selling two product lines out of the same showroom, you sell
4 less cars. Each person, you know, has two things to choose
5 from. Once we separated that, that doesn't occur anymore.

6 Q. The other dual is Volkswagen, correct?

7 A. Correct.

8 Q. Was it your belief that those were
9 competitive brands?

10 A. No.

11 Q. I'm not sure I follow the earlier
12 statement you made about having two things to choose from.

13 A. A salesperson doesn't care what they're
14 selling, as long as it's putting a commission in their
15 pocket.

16 Q. I see.

17 A. They don't care if it's a Lincoln
18 Mercury or a Volkswagen. Now that we have dedicated Lincoln
19 Mercury salespeople and dedicated Volkswagen salespeople,
20 that's what they have to sell.

21 Q. I see.

22 Were there any other problem areas that
23 were evident during that break-in period, that first seven
24 months?

25 A. Yes.

00019

1 Q. Tell me what they were.

2 A. Service, initially the same thing as
3 sales, everybody went to the same service write-up.

4 Q. And they just had to be redirected?

5 A. No. There was one service write-up for
6 all products, and now those are both separate also.

7 Q. I see.

8 Were you aware of whether the agreement
9 that Ford entered into with Mr. Reichert to allow this dual
10 had some conditions attached to it?

11 A. Yes.

12 Q. Do you know what those conditions were?

13 A. Yes.

14 Q. What were they?

15 A. Separate customer contact points. So we
16 have two cashier areas, two customer waiting areas, two
17 separate showrooms, two separate managers.

18 Q. How long were you given to get to that
19 point, because you didn't start out that way?

20 A. There was no time frame. I mean, they
21 had already known our construction schedule, and that by the
22 first of the year we were going to have the new building
23 open.

24 Q. So they approved that as part of the
25 deal, and the assumption was that you would get the

00020

1 construction done on time and things would split up at that
2 point?

3 A. Correct. Correct.

4 Q. Okay. When you were hired, did
5 Mr. Reichert indicate to you that permission to dual had
6 been granted? Did you know that was part of the package
7 that you were going to be operating?

8 A. No.

9 Q. You did not?

10 A. When I was hired?

11 Q. Yes.

12 A. No.

13 Q. When did you first learn about it?

14 A. December of 2000.

15 Can I -- I didn't answer that correctly.

16 Q. Okay, sure.

17 A. December of 2000 is when I found out we
18 bought the other facility.

19 Q. I'm sorry, sir.

20 A. December of 2000 is when I found out
21 that we were going to purchase the other facility.

22 Q. Okay. So that was ten months after you
23 were hired?

24 A. Correct.

25 Q. Okay. Am I correct that when Lincoln

00021

1 Mercury moved into that facility, it was pretty well
2 trashed?

3 A. The facility itself was 15 years old, so
4 yes, it was not in -- I wouldn't call it trashed. It was
5 much better than what we were coming out of, a 100 percent
6 better than what we were coming out of.

7 Q. Tell me about that. Where was --

8 A. The Dixon facility.

9 Q. I see.

10 Where was the Dixon facility located
11 before you moved in and started operations as Fairfield
12 Lincoln Mercury?

13 A. I don't understand what you're --

14 Q. Was it in a different location before?

15 A. The Dixon facility?

16 Q. Yes, sir.

17 A. No, it's at the same location, in that
18 building it's --

19 Q. What's the street address?

20 A. 6195 Dixie Highway.

21 Q. And the new address is 6055 (sic)?

22 A. 6065.

23 Q. Okay, 6065.

24 And at 6065 Dixie Highway, you have two
25 separate showrooms?

00022

- 1 A. Correct.
- 2 Q. Two separate service areas?
- 3 A. Two separate write-up areas.
- 4 Q. Two separate service write-up areas.
- 5 What other aspects of the arrangement
- 6 are physically separate?
- 7 A. Everything from the physical service
- 8 department forward (indicating). The shop itself is the
- 9 same. The parts department is the same.
- 10 Q. And when did you move in again, to 6065
- 11 Dixie?
- 12 A. With Lincoln Mercury or --
- 13 Q. Yes.
- 14 A. June of 2001.
- 15 Q. Okay. And how about Volkswagen?
- 16 A. We purchased the end of February 2001.
- 17 Q. So the Volkswagen piece moved in first?
- 18 A. It was always there.
- 19 Q. I see.
- 20 Do you know when Mr. Reichert received
- 21 permission to relocate?
- 22 A. I don't recall the exact date.
- 23 Q. Do you know when he received permission
- 24 to dual?
- 25 A. I don't recall the exact date.

00023

1 Q. Can you bracket it in terms of spring,
2 summer, fall?

3 A. Between March and June, 2001.

4 Q. Are you aware of problems that arose
5 between Mr. Reichert, in his request to dual, and Lincoln
6 Mercury's regional manager's approval of it?

7 A. No.

8 Q. Did you ever become aware that
9 Mr. Reichert perceived that Mr. Carter was going to withhold
10 approval, after he said he would give it to him?

11 A. No.

12 Q. Or withdraw approval after he said he
13 would give it to him?

14 A. No.

15 Q. Did you ever hear Mr. Reichert comment
16 that he might have to sue Jerry Carter to get this deal
17 done?

18 A. Absolutely not.

19 Q. What is your understanding of
20 Mr. Reichert's relationship with Jerry Carter while he was
21 here?

22 A. Seemed great to me, never saw any
23 animosity.

24 Q. You never saw any adversity between the
25 two of them?

00024

1 A. No.

2 Q. Do you know if Mr. Carter and

3 Mr. Reichert had a social relationship?

4 A. No.

5 Q. You don't know or no, they did not?

6 A. I don't believe they did.

7 Q. Okay. How about Mr. Reichert and

8 Mr. Carnegie?

9 A. No.

10 Q. You don't believe they do?

11 A. I don't believe they do.

12 Q. Okay. Were you present at a dinner at

13 Wetherington Country Club, where Mr. Carter was there, and

14 perhaps Pat LeTarte, to talk about some business issues?

15 A. Yes.

16 Q. Do you remember when that was?

17 A. No, I don't. I don't recall.

18 Q. Were you and the other Lincoln Mercury

19 general managers there?

20 A. Yes.

21 Q. Was it Mr. Carter and Mr. LeTarte?

22 A. Yes.

23 Q. Anyone else that you remember?

24 A. I can't remember.

25 Q. Do you remember what was discussed on a

00025

1 business level?

2 A. Just the state of affairs of Lincoln
3 Mercury, how were things going, sales, you know, how
4 everything was going, our individual scores.

5 Q. Was there a request made at that meeting
6 for financial assistance?

7 A. No.

8 Q. Was there an offer of financial
9 assistance made at that meeting relative to turning some
10 inventory, some aged inventory?

11 A. Yes, yes, yes.

12 Q. There was an offer by Mr. Carter to do
13 that?

14 A. Uh-huh.

15 Q. What did he offer?

16 A. As I recall, it was \$10,000, between the
17 three stores.

18 Q. And did that just come out of the blue?
19 He said, "hey, guys, it's nice to see you. And by the way,
20 I've got \$10,000 for you to help move some old inventory."

21 A. Not quite to that extreme, but yes.

22 Q. Well, it was all his initiative?

23 A. Absolutely.

24 Q. Okay. And were you surprised when that
25 came out of the conversation?

00026

1 A. A happy surprise.

2 Q. But you didn't see that coming; is that
3 right?

4 A. No.

5 Q. Do you know if any of your other
6 counterparts from the other two dealerships were similarly
7 surprised to hear that offer?

8 A. I never discussed it with them, their
9 surprise or their non-surprise.

10 Q. Okay. And was it Jerry that made the
11 offer or Pat?

12 A. Yes, Jerry.

13 Q. Okay. And was there any preamble to it
14 or was it just, "hey, guys, I've been thinking and I know
15 you all have some aged inventory and this is what I'd like
16 to offer you?" Tell me how it happened. I'm kind of
17 throwing thoughts out here, but I don't know if any them are
18 right.

19 A. In the conversation at that dinner,
20 there was this much (indicating) -- I'm sorry -- very little
21 business and more social, just having dinner and the state
22 of how things were going, and Larry had brought up that.

23 Q. Larry Feldhaus?

24 A. Larry Feldhaus.

25 And Jerry is saying, you know, "what's

00027

1 going on, what can I help you with, is there anything that
2 we can help you with, anything the region can?" Larry had
3 brought up that we had a lot of aged prior inventory.

4 Q. And what did Jerry say in response to
5 that?

6 A. I don't remember his exact words, but
7 that's when he said what if I -- you know, don't quote me, I
8 can't remember the exact words, but, basically, what if I
9 put \$10,000 out to somehow come up with a program to move
10 the aged inventory?

11 Q. And everybody said that would be good,
12 right?

13 A. Absolutely.

14 Q. Did he tell you what kind of program he
15 had in mind or how he was going to make it happen?

16 A. No.

17 Q. Did anybody inquire?

18 A. No. He told us, "you guys come up with
19 how you want to do the program." And, you know, it was
20 basically, "I have this money and you come up with a program
21 to move the inventory."

22 Q. He didn't say from whence this money
23 came? I mean, was it discretionary money that he had?

24 A. No.

25 Q. At the regional level, was it LMDA

00028

1 money, do you have any idea?

2 A. I don't know.

3 Q. And you never heard it characterized as
4 to what the ultimate source of that money was?

5 A. When someone is offering me, or myself
6 and my two counterparts, I'm certainly not going to
7 question, well, where are you getting it?

8 Q. No. I don't mean that you would
9 challenge him or anything. I'm just wondering if it ever
10 became known to you how that money came to be available?

11 A. No.

12 Q. Okay. So you were saying that he said
13 what if I put up \$10,000 and came up with a program, and
14 then he asked you to come up with a program?

15 A. No. He didn't say, "I'll come up with a
16 program."

17 Q. Okay.

18 A. He said, "you guys come up with a
19 program that will help move the inventory."

20 Q. Okay. And so his piece was, he had the
21 money, you would have to figure out how to move the
22 inventory, figure out how to spend the money, correct?

23 A. Correct.

24 Q. And that wouldn't have been too
25 difficult to do, right, for you guys?

00029

1 A. (Shrugging shoulders). Well --

2 Q. What did you come up with?

3 A. I don't recall the exact particulars.

4 It was based on -- I believe we targeted -- and once again,
5 I can't remember when this meeting took place, but I believe
6 we targeted Mountaineers and we set a dollar amount, but I
7 can't remember what it was. And when each store sold a
8 Mountaineer, we basically reported it to Larry and he
9 tracked who sold how many. At the end of the program, we
10 divided the money accordingly. Of course the money wasn't
11 there yet, we had to let Mr. Carter know how the money
12 divided up.

13 Q. And the money that came in went to
14 Kenwood Dealer Group, correct, it didn't get funneled down
15 to your salespeople?

16 A. No. I believe we actually did pay the
17 salespeople. The bonus was to them, I recall. I don't
18 know. I don't remember for sure.

19 Q. Who would know? How could I understand
20 that, what exactly did happen there?

21 A. I don't know.

22 Q. Well, you said Larry tracked the number
23 of sales?

24 A. Correct.

25 Q. And then ultimately did the math and

00030

1 allocated the price per vehicle to where they were sold?

2 A. Correct.

3 Q. Okay. Did you do any recordkeeping in
4 connection with this program?

5 A. No.

6 Q. So the recordkeeping that was done was
7 done by Mr. Feldhaus?

8 A. Correct.

9 Q. Do you remember if all the money went to
10 your sales staff?

11 A. I don't recall.

12 Q. Was it split, some portion went to the
13 sales staff and some portion stayed with the Kenwood Dealer
14 Group?

15 A. My recollection is all of it went to the
16 salespeople, at least in my store. That's my memory of it.

17 Q. Do you know whether each of the three
18 stores handled the money the same way?

19 A. I don't know.

20 Q. Are you aware, Mr. Huser, of other
21 instances where Mr. Carter offered financial assistance to
22 dealerships operated by the Kenwood Dealer Group, outside
23 the channel of LMDA money?

24 A. No.

25 Q. Are you aware of where Mr. Carter

00031

1 obtained money to make available for this type of program?

2 A. No.

3 Q. I know you've told me you didn't know
4 specifically in this instance, but are you aware, generally,
5 of how he would come by funds that, you know, he could say
6 "what if I could get you \$10,000?"

7 A. No.

8 Q. Have you ever had any discussions with
9 anybody at Ford that would identify where those monies would
10 be available on a regional level?

11 A. No.

12 Q. You told me that this was an instance
13 where this offer came from Mr. Carter?

14 A. Correct.

15 Q. Rather than being initiated at the
16 request from you all?

17 A. Correct.

18 Q. Were there instances where Kenwood
19 Dealer Group made requests, not like this one, but where
20 they initiated requests for extra money or extra financial
21 assistance?

22 A. I'm not aware of any.

23 Q. How about Mr. LeTarte, ever know of any
24 instances where somebody has gone to Pat LeTarte and said,
25 "hey, we're stuck on this, we need some extra money?"

00032

1 A. No.
2 Q. Or anybody else at the regional office?
3 A. No.
4 Q. Do you know what the term "consolidator"
5 means, "consolidator dealer?"
6 A. I've read about consolidation.
7 Q. Okay. What do you know about
8 consolidation, in the Lincoln Mercury parlance?
9 A. Very little.
10 Q. Do you know that Mr. Reichert is the
11 consolidator for Lincoln Mercury in the Cincinnati market?
12 A. I did not know that.
13 Q. Until I said that, or you know it now,
14 huh?
15 A. No, until I found out that that was one
16 of the issues of this suit.
17 Q. Okay. Do you know anything about how
18 Mr. Reichert came to be the consolidator?
19 A. No.
20 Q. And when I say Mr. Reichert, I'm talking
21 about the Kenwood Dealer Group, in which he owns controlling
22 ownership interest.
23 A. No.
24 Q. Have you ever discussed the topic of
25 consolidation of the marketplace with Mr. Reichert?

00033

1 A. No.

2 Q. Do you know if he has any plans to
3 acquire any other Lincoln Mercury dealerships?

4 A. No.

5 Q. Have you read the lawsuit?

6 A. No.

7 Q. Am I correct in believing that the only
8 knowledge you have about the issues in the lawsuit would
9 have come out of communications where Mr. Hengehold was
10 present?

11 A. Correct.

12 Q. Have you discussed the lawsuit with
13 Mr. Reichert outside of Mr. Hengehold's presence?

14 A. No.

15 Q. Mr. Huser, I'm going to ask you some
16 specific questions about sums of money that were identified
17 on four documents as being paid to one of the Reichert
18 Lincoln Mercury dealerships. I'm just asking you if these
19 sums and dates ring any bells with you, okay?

20 A. Okay.

21 Q. In April of 2000, are you aware that
22 Fairfield Lincoln Mercury received \$47,250 in advertising
23 funds from the region?

24 A. Yes.

25 Q. And do you remember how that happened,

00034

1 or what transpired to make that happen?

2 A. Part of the purchase of the dealership
3 from Ford, there was an amount that basically was for
4 differences in what the assets of the property appraised for
5 between Mr. Dixon's, Ford's and our appraisal, and used car
6 inventory, which had about \$140,000 worth of wholesale loss
7 in it.

8 Q. So this \$47,250 related to making up a
9 spread, so to speak, between somebody's appraisal of the
10 existing inventory, vehicle inventory, and what --

11 A. No.

12 Q. I'm sorry.

13 A. The physical inventory of the
14 dealership: Service lifts, desks, garbage cans.

15 Q. Physical inventory, okay.
16 And how many appraisals were there?

17 A. Three, that I'm aware of.

18 Q. And whose number ruled the day when it
19 was all over?

20 A. It was averaged.

21 Q. Okay. And the 47,250 was paid over by
22 Ford to compensate Mr. Reichert for what he paid?

23 A. Correct.

24 Q. Or to reimburse Mr. Reichert for what he
25 paid, because he paid Ford, didn't he?

00035

1 A. Correct.

2 Q. To buy the dealership from dealer

3 development?

4 A. Yes.

5 Q. Okay. And it's your understanding that
6 that figure was strictly for making up this variance in the
7 physical inventory, it wasn't co-op money, it wasn't for
8 advertising and it wasn't for grand opening; is that right?

9 A. Correct.

10 Q. Were there separate sums received about
11 that time, for grand opening or new dealer opening or new
12 advertising for a new dealer?

13 A. I don't remember.

14 Q. Okay. Are you aware of whether such
15 monies would ordinarily be available when a new dealership
16 opens?

17 A. Yes, with all manufacturers.

18 Q. Okay. And are you saying that you don't
19 know if the Reichert dealership received any such funds?

20 A. I don't believe we ever used grand
21 opening funds. I don't recall that.

22 Q. I'm sorry. Did you say whether you ever
23 used grand opening funds or whether you ever received them?

24 A. If they were available, I don't -- we
25 never did have a grand opening.

00036

1 Q. Do you recall whether there were monies
2 made available to the Kings dealership for sell-down
3 assistance --
4 A. No.
5 Q. -- in December of 2000?
6 A. No.
7 Q. Or whether there were monies made
8 available to Kings for Cougar co-oping --
9 A. No.
10 Q. -- in October of 2000?
11 A. No.
12 Q. Is that because, if that happened, it
13 just wouldn't come to your attention, that's not your store?
14 A. That's not my store.
15 Q. Do you know whether Kings received
16 \$17,000 in February of 2000, from the region, for any
17 purpose?
18 A. No.
19 Q. Or 36,750 in April of 2000?
20 A. No.
21 Q. Or whether Northgate received \$21,000 in
22 April of 2000 for co-op?
23 A. No.
24 Q. Don't know?
25 A. Don't know.

00037

1 Q. Let me direct your attention to the end
2 of '01, roughly the end of October of that year. Do you
3 remember receiving a \$2,500 check for marketing
4 assistance --

5 A. No.

6 Q. -- at the Fairfield store?

7 A. I don't recall.

8 Q. Okay. Or a \$420 check for an inventory
9 sell-down issue at your store?

10 A. I don't recall.

11 Q. And is that because it's too long ago
12 or, I mean, what --

13 A. Because it's pretty long ago.

14 Q. Okay. Those are not particularly high
15 sums of money, are they?

16 A. No.

17 Q. So if you received money back then for
18 those reasons, it would have been kind of considered
19 routine?

20 A. No.

21 Q. No?

22 A. No.

23 Q. Okay. Was it not routine to receive
24 separate checks from time to time, that were identified as
25 marketing assistance or inventory sell-down?

00038

1 A. There's LMDA funds that come from time
2 to time. I mean, yes, there's funds. With what consistency
3 there is and, you know, how often it is, there's no pattern
4 to it.

5 Q. Okay. When a LMDA check would come in,
6 would you identify it as such?

7 A. Yes.

8 Q. How?

9 A. It says "LMDA" on it.

10 Q. On the memo line?

11 A. No, on the actual check.

12 Q. On the check itself?

13 A. Yes.

14 Q. And is there a standard template, so to
15 speak, for how those checks are cut?

16 A. They're all similar.

17 Q. Okay. And they're printed off -- those
18 checks that you've identified as LMDA-sourced monies all
19 come from Young & Rubicam?

20 A. I don't recall if they all come from
21 them.

22 Q. Do you know Young & Rubicam's
23 association with the LMDA?

24 A. Yes.

25 Q. And what is that?

00039

1 A. That's their advertising agency, and
2 Jeff Drew is -- he does the advertising.

3 Q. But you're saying there could be LMDA
4 funds that come without Young & Rubicam's connection or
5 involvement?

6 A. I don't recall there being any.

7 Q. So if you saw an LMDA check, you would
8 expect that it reflected involvement by Young & Rubicam to
9 disperse those funds?

10 A. Correct.

11 Q. Whose company was the check written on,
12 who is the payor?

13 A. I don't know.

14 Q. So it would be unusual, then, in the
15 course of everyday operations, at least the ones that you're
16 aware of, to have a check come in that was representing
17 financial assistance from Ford that wasn't an LMDA fund
18 check; is that right?

19 A. No.

20 Q. That's not right?

21 A. That's correct.

22 Q. I'm not sure I understand your answer.

23 Maybe my questions are getting twisted a little bit. I'm
24 trying to find out whether, when you receive checks that
25 were advertising support or marketing support, were they

00040

1 all, in your experiences, reflecting LMDA money?

2 A. No.

3 Q. Where would the other checks come from
4 and what would they reflect?

5 A. I don't recall.

6 Q. How would you receive checks that
7 weren't LMDA funds?

8 A. Through the mail.

9 Q. Would there be any covering information
10 with it, any memos, anything that would tie the check to a
11 specific purpose?

12 A. Check stub.

13 Q. Okay. And what -- if you were to
14 describe to someone what types of check stubs you might
15 receive in connection with these monies, what would they
16 say?

17 A. I don't recall any.

18 Q. You don't recall ever having it happen
19 or you don't recall?

20 A. I don't recall any specifics on a check
21 stub.

22 Q. But you know these checks would come
23 from time to time?

24 A. No, I wouldn't categorize it as "time to
25 time."

00041

1 Q. How would you categorize it?

2 A. There was some specific check and then
3 the check would go -- it's not an every day, very often
4 occurrence, but it's something that's in my normal business.

5 Q. In your capacity, Mr. Huser, as general
6 manager, was there bookkeeping done to identify where these
7 checks came from, or only the amounts that came in?

8 A. No, only the amount.

9 Q. Do you remember checks coming in
10 October of '01, \$1500 for marketing assistance --

11 A. No.

12 Q. -- at the Fairfield store?

13 A. I don't recall.

14 Q. \$18,785, April in of -- I'm sorry,
15 October of -- well, do you remember a check for \$18,785 for
16 an April '01 statement that may have been paid in October?

17 A. No.

18 Q. That's a pretty big chunk of change,
19 isn't it?

20 A. Right.

21 Q. It's unusual to see a check of that
22 amount?

23 A. Correct.

24 Q. But that figure doesn't ring a bell or
25 jog your memory at all?

00042

1 A. I receive several checks a day from
2 several different sources, so, no, a check from 2001 does
3 not ring a bell.

4 Q. Well, I was just wondering if the figure
5 itself made it stand out?

6 A. No.

7 Q. Okay. Or a check for \$2,600 that came,
8 again, in October of '01, relative to a statement that was
9 sent in May of that year?

10 A. No.

11 Q. Okay. I think you testified earlier
12 that you were aware that there were some conditions imposed
13 on the dual?

14 A. Correct.

15 Q. And you mentioned a couple of them to
16 me, about getting into a separate facility within the, you
17 know, foreseeable period of time?

18 A. Correct.

19 Q. Although I guess you told me there
20 wasn't a set deadline for doing it; is that right?

21 A. There was nothing in writing about a set
22 time, no.

23 Q. Okay. Do you recall any other
24 conditions --

25 A. No.

00043

1 Q. -- associated with the dualing
2 permission?

3 A. The ones that I'm aware of are the
4 separation of customer contact points in the facility
5 itself. We changed the plans of the facility to make the
6 two showrooms look more separate than the original plans.
7 But that's it.

8 Q. Are you aware that Mr. Reichert's
9 participation, or at least designation as a consolidator for
10 the Lincoln Mercury in this market, was also connected with
11 or hinged to the request to get dualing approval?

12 A. No, I'm not aware.

13 Q. Have you ever seen a consolidator
14 agreement that Mr. Reichert signed?

15 A. No.

16 Q. Did he ever make you aware that he
17 signed one?

18 A. No.

19 Q. Do you know if Mr. Reichert ever
20 provided a written long-term plan for the Cincinnati market?

21 A. No.

22 Q. Or a plan that would outline his service
23 capacity needs for the market?

24 A. No.

25 Q. Do you know if Mr. Reichert was required

00044

1 to aggressively find and secure buildable property and
2 pursue building a Lincoln Gallery facility in replacing the
3 Northgate store?

4 A. I wasn't aware.

5 Q. Do you know that his approval for
6 dualing had some time constraints, in terms of how long he
7 was going to be able to permit that?

8 A. No.

9 Q. Do you know if he has any options to
10 extend his permission to dual?

11 A. I'm not aware of any time conditions.

12 Q. Do you know of any program that Ford
13 has, or any plan that Ford had, whose objective is to
14 eliminate the number of different dealerships in the city;
15 not the dealer points, but the ownership?

16 A. No.

17 Q. Are you involved from time to time with
18 dealer trading?

19 A. Personally, no.

20 Q. Your dealership is though?

21 A. Yes.

22 Q. Car managers would be?

23 A. Correct.

24 Q. Do you agree that that's an important
25 part of the car business, to be able to dealer trade?

00045

1 A. Yes.

2 Q. You try to get the customer the car that
3 he or she is looking for, and hopefully the dealer you trade
4 with will reciprocate when you need one, is that how that
5 thing is at least supposed to work?

6 A. Yes. Not always.

7 Q. I didn't say it always worked that way,
8 but that's how it's supposed to, isn't it?

9 A. Uh-huh, yes, that's the way it can work.
10 It doesn't work with everybody. I would say about
11 50 percent of the dealers.

12 Q. And do you find out through individual
13 efforts whether it works or not?

14 A. Rarely.

15 Q. When you started at Fairfield Ford, did
16 you dealer trade with Eastside Lincoln Mercury?

17 A. Me personally?

18 Q. Your dealership.

19 A. I don't recall.

20 Q. Is there a policy right now not to
21 dealer trade with Eastside?

22 A. Yes.

23 Q. When did that get implemented?

24 A. About the time the lawsuit took place.

25 Q. And at whose direction was that policy

00046

1 implemented?
2 A. Mr. Reichert's.
3 Q. Did he talk to you about it personally?
4 A. Personally, me? Yes, but I believe it
5 was in a group, all three of us.
6 Q. Okay. And was that the reason given?
7 A. Yes.
8 Q. There's a lawsuit now and we're not
9 going to dealer trade with Eastside?
10 A. That's correct.
11 Q. Was there anything else said about it?
12 A. No.
13 Q. Are there any other dealers that
14 Mr. Reichert has refused to trade with since you've been a
15 part of his organization?
16 A. No.
17 Q. Do you think that's hurting Eastside
18 Lincoln Mercury?
19 A. I have no idea.
20 Q. Well, would it hurt you if somebody who
21 you used to dealer trade with stopped doing it?
22 A. No, because there are several dealers
23 like that now.
24 Q. Who are they?
25 A. I don't know their names. I know we

00047

1 don't dealer trade with everyone.

2 Q. It wouldn't relate to lawsuits with the
3 other ones, would it?

4 A. No.

5 Q. Well, what would the reason be?

6 A. Relationships.

7 Q. I don't understand.

8 A. If somebody reciprocates. If I call X
9 dealer and every time I need a car it's never available, and
10 when they call me, you know, it's always expected -- you
11 know, you develop a relationship in dealer trading.

12 Q. So, if it's not reciprocated, then
13 there's no point in doing it; is that right?

14 A. Over time, if it's a pattern. Not just
15 one time, but a pattern.

16 Q. Okay. Right, right.

17 Do you know if there was an initial
18 denial by Lincoln Mercury of Mr. Reichert's dual request?

19 A. No.

20 Q. I think you testified that the approval
21 had already been given by the time you were hired; is that
22 right?

23 A. We hadn't bought the store when I was
24 hired.

25 Q. Okay.

00048

1 A. I mean, there was no store to deal with
2 when I was hired.

3 Q. All right. Mr. Huser, did you attend a
4 meeting with other members of the Kenwood Dealer Group to
5 talk about wholesale planning?

6 A. No.

7 Q. Do you recall a meeting where there was
8 discussion among members of the Kenwood Dealer Group along
9 the lines of trying to aggregate sales to assist in the
10 allocation process?

11 A. No.

12 Q. Would that be possible, if you know?

13 A. Would it be possible to do that?

14 Q. Yes.

15 A. I have no idea.

16 Q. Do you remember a meeting where
17 Mr. LeTarte would have been present to discuss how to
18 enhance vehicle allocation to the Kenwood Dealer Group?

19 A. No.

20 Q. You've never taken part in such a
21 meeting?

22 A. No.

23 Q. Okay. Are you involved with the
24 allocation process?

25 A. Yes.

00049

1 Q. When you meet with Mr. LeTarte to
2 discuss allocation issues, how does the process work?

3 A. Now, presently, or in the past?

4 Q. Well --

5 A. Because it's different.

6 Q. You're telling me it's different, so I
7 guess let's start with now and then you can tell me how it's
8 changed.

9 A. It's on the Ford Motor Company Pipeline.
10 It's all web-based. I can basically go in the system and,
11 for a particular allocation, like I did yesterday, it says
12 this is how many cars are going to be offered to you, and
13 you put in if you want all those cars. Sometimes you want
14 them all, sometimes you don't. Sometimes you read --
15 there's also a line for additional allocation if you want
16 it. I can't recall a time in the last year that I've asked
17 for additional allocation.

18 Q. Cars are plentiful right now?

19 A. Yes, they are.

20 Q. Okay. Let me back up just a second.
21 Did you all have a meeting with Pat to put your wholesale
22 order in?

23 A. One time.

24 Q. Tell me when that happened and why you
25 would have a meeting like that.

00050

1 A. Why, I don't know. Pat asked that we do
2 one wholesale, and I have no idea why he asked.

3 Q. When did you do it?

4 A. I can't remember. It has to be -- God,
5 I would say, for me not to remember, at least a year and a
6 half plus ago.

7 Q. Well, was there some benefit to Kenwood
8 Dealer Group to do it that way?

9 A. No.

10 Q. Was there some benefit to Pat?

11 A. I would be speculating. Time would be
12 the only thing. But for his time savings it was mine and
13 Jerry Mullins' time wasted, because we had to drive to the
14 Auto Mall.

15 Q. That's right.
16 Did you have one such meeting and then
17 not do it again?

18 A. Correct.

19 Q. Was there anything of value that you all
20 got back for agreeing to do this?

21 A. No.

22 Q. Other than currying Mr. LeTarte's favor?
23 I mean, I'm sure that's always an issue, isn't it?

24 A. It actually became his detriment,
25 because we ended up taking less cars than we would have

00051

1 individually.

2 Q. Why?

3 A. Because instead of him beating up Larry
4 to take 14 Grand Marquis, Jerry says, "well, wait a minute,
5 I've got probably ten I don't need." We ended up actually
6 switching some cars between the dealerships instead of
7 taking the cars on wholesale.

8 Q. Do you think Mr. LeTarte recognized that
9 and decided that this wasn't a good plan?

10 A. That would be an assumption. I never
11 talked to him about it.

12 Q. Did this meeting take place, Mr. Huser,
13 before the lawsuit, which was what, June of '01, June or
14 July of '01, if that's a --

15 A. I don't remember the exact date. I've
16 already said it had to be at least a year and a half plus.
17 If that puts it before the lawsuit, then yes.

18 Q. It sounds like it puts it right in that
19 time frame somewhere.

20 A. I don't remember.

21 Q. Okay.

22 A. I don't remember.

23 (THEREUPON, AN OFF-THE-RECORD DISCUSSION

24 WAS HELD).

25 BY MR. FLEMER:

00052

1 Q. With respect to allocation, have you
2 encountered any specific allocation problems at the time of
3 new vehicle rollouts?

4 A. For initial allocation, yes. But I
5 believe -- I can't even remember the term they used but --
6 system fill.

7 Q. Excuse me?

8 A. It's what they call "system fill."

9 Q. What is that? That's a new one.

10 A. That's when they allot the initial
11 allocation of first cars that are going to be built in the
12 factory.

13 Q. Were there instances that you know about
14 where there was no car available to you, you got skunked or
15 shut out at new vehicle rollout?

16 A. I don't remember specifics, but yes,
17 there have been times.

18 Q. Could you find a car from one of the
19 other dealers in the group?

20 A. No.

21 Q. So all three Lincoln Mercury dealerships
22 got zero allocation at rollout?

23 A. I typically don't ask them what they
24 got.

25 Q. So you don't --

00053

1 A. If they would have gotten one that I
2 didn't get, I wouldn't have been able to get it from them
3 anyway. We don't like each other that much.

4 Q. Okay. So you know it's happened but you
5 don't remember when?

6 A. Correct.

7 Q. It's happened at Fairfield?

8 A. At Fairfield, yes.

9 Q. Okay. Do you remember if you had
10 trouble getting initial allocation for the Lincoln Navigator
11 when it rolled out in late '97?

12 A. I wasn't there in '97.

13 Q. That's true. So you wouldn't know?

14 A. I wouldn't know.

15 Q. How many times do you think it's
16 happened since you've been there?

17 A. Well, there's only been the Mountaineer,
18 the new restyled Navigator --

19 Q. Let's take them one at a time. Let's
20 talk about the Navigator restyle.

21 A. Uh-huh.

22 Q. Did you get allocation then?

23 A. I don't believe I got one for system
24 fill. My store sells less than one Navigator a month, so I
25 wouldn't have been someone that was allocated one at system

00054

1 fill.

2 Q. I'm sorry. Tell me again how this
3 system fill process is supposed to work.

4 A. It's the initial cars that they build in
5 the factory, you know, when they first ramp it up. It's
6 before the actual production is at full capacity.

7 Quite frankly, what I've seen is most of
8 those cars end up getting to the dealers last because the
9 initial cars off the line have different issues that need to
10 be fixed. They park it in the lot, it gets buried, and the
11 first ones built end up being the last ones you get.

12 Q. Was this a situation, Mr. Huser, where
13 you were shown to have allocation but you just didn't get
14 delivery?

15 A. No, there was no allocation.

16 Q. Okay. How about with the Cougar, any
17 trouble there?

18 A. I wasn't around when the Cougar was
19 introduced. That was before March of 2000.

20 Q. Okay. How about the Grand Marquis,
21 before your time?

22 A. Before my time.

23 Q. And the LS?

24 A. Before my time.

25 Q. The Aviator?

00055

1 A. I was there then. I believe I got one
2 for system fill. I think I still have it.

3 Q. Did your store get an allocation of
4 popular vehicles on a special purchase basis when the store
5 was purchased, if you know?

6 A. No disrespect to Ford, but in the three
7 years that I've been with Lincoln Mercury, I wouldn't say
8 there has been any popular vehicles.

9 Q. Okay.

10 A. That was also before my time.

11 Q. Okay. And you don't know, historically,
12 whether that happened or not?

13 A. I have no idea.

14 MR. FLEMER: Let's go off the record for
15 a second.

16 (THEREUPON, AN OFF-THE-RECORD DISCUSSION
17 WAS HELD).

18 BY MR. FLEMER:

19 Q. Are you aware of what type of dealer
20 agreement Mr. Reichert has at your store, whether it's a
21 continuing agreement or a term agreement that's got a --

22 A. I'm not aware of it.

23 Q. -- time frame limit on it?

24 A. I'm not aware of it.

25 Q. Are you aware of losses that were being

00056

1 sustained by the dealer group when they took over Fairfield
2 Lincoln Mercury?

3 A. Absolutely.

4 Q. How long a period did that take place?

5 A. The first -- all of 2000, 2001. We
6 broke even in 2002.

7 Q. So for the balance of 2000 and all of
8 2001, you were in a loss posture?

9 A. Correct.

10 Q. How much, on average, per month were you
11 losing? I don't know if it fluctuated or not, but you're
12 familiar with those figures, that would have been Job 1 for
13 you, right?

14 A. Absolutely.

15 Q. Okay. What was the average per month
16 loss for 2000 and 2001, as best you can remember?

17 A. 50,000.

18 Q. And what action or what conversation, if
19 any, did you have with -- or did the dealer group have with
20 Ford on that subject?

21 A. I'm not aware of any conversation that
22 was with Ford regarding the losses.

23 Q. Had you projected that that was going to
24 get turned around at some point to Ford, didn't they request
25 some projections on that?

00057

1 A. Well, if you realize that we bought the
2 Dixon facility kind of when the wheels came off at Ford and
3 Lincoln Mercury, yeah, I'm sure we projected a lot of
4 things. I would have probably not have taken that job had I
5 known the store was going to lose that much money. But when
6 the wheels fell off, I'm sure it wasn't just us that made
7 less or lost money with Ford or Lincoln Mercury dealerships.

8 Q. With respect to the proposal and
9 ultimate approval to move up the street and take over the
10 Volkswagen facility, --

11 A. Yes.

12 Q. -- was that part of the plan to turn
13 that around?

14 A. I would say we hoped that selling
15 Volkswagen would. We already had experience on Colerain
16 Avenue selling Volkswagen and it seemed to be a profitable
17 line, yes.

18 Q. Did you know whether Mr. Reichert
19 presented that point to Ford as an effort to explain how
20 things were going to turn around?

21 A. I'm not aware of any conversation he had
22 with Ford with regards to that.

23 Q. Are you aware of any specifics that
24 Mr. Reichert had in terms of asking for approval to go up
25 the street and dual?

00058

1 A. Could you rephrase your question?

2 Q. Yeah. Are you aware of any specifics
3 that Mr. Reichert included in his proposal to get Ford to
4 approve taking on Volkswagen as a dual, and then having two
5 facilities up the street?

6 A. I'm not aware of his proposal. I'm
7 aware of what was the stipulations on us, as far as the
8 facility, that we've already talked about.

9 Q. And you said you started showing a
10 profit in 2002, or at least breaking even. I don't know
11 what you said.

12 A. We made our first profit in May and we
13 were black in August and we were even for the year. We
14 slipped into black for a short period of time.

15 Q. So the year, as a whole, was a
16 break-even year?

17 A. Pretty much.

18 Q. And what's your current posture?

19 A. I don't have my March financial. We've
20 lost probably 26 a month the first two months.

21 Q. Is it your opinion that the relocation
22 was effective in turning this problem around?

23 A. It doesn't have to do with the
24 relocation.

25 Q. What does it have to do with?

00059

1 A. Volkswagen and the body shop are the
2 primary reasons.

3 Q. Tell me, is that a two-part answer or a
4 one-part answer?

5 A. That's -- those are the two biggest
6 contributing factors to the place now breaking even.

7 Q. How does the Volkswagen piece contribute
8 to breaking even?

9 A. We purchased a point that was typically
10 always fifth out of the five dealers in the city. Last year
11 the city was down 12 percent and we were up 47 percent, and
12 we were only about nine units short of first place for the
13 year, and we presently hold first place in Volkswagen.

14 Q. And how did you do that?

15 A. The facility and hiring the right
16 manager.

17 Q. And that experience is related to your
18 VW operation only, right?

19 A. No. I have the facility on the Lincoln
20 Mercury side that was also redone, which is what allowed
21 me -- conversely, Lincoln Mercury was down almost 13 percent
22 in the city last year and we were dead even, sold the exact
23 same amount of cars. And that's partly the facility and,
24 once again, I have a great Lincoln Mercury sales manager.

25 Q. What would your best estimate be as to

00060

1 how much you would have lost on a monthly basis if there
2 hadn't been approval to dual Volkswagen?

3 A. I couldn't even speculate. I couldn't
4 speculate. There's more factors than just dualing involved.
5 We took over a store that was for sale for two years, pretty
6 poorly run, employees that were left were probably not the
7 best employees in the world, and turning the store around
8 was a process that was more than just dualing the two
9 stores.

10 Q. So dualing was a part of it, but you
11 don't know how to cut the pie or divide the pie to say how
12 much?

13 A. It's a small, small part, very small.

14 Q. And the other aspect you said was a body
15 shop?

16 A. Yes.

17 Q. Tell me about that.

18 A. The facility has a 24-stall body shop as
19 opposed to the five that we had down the street; two paint
20 booths as opposed to one. It's a pretty nice body shop
21 facility.

22 Q. And were those features renovated
23 features or were they already there?

24 A. The body shop was there.

25 Q. But without the permission to dual, your

00061

1 business wouldn't have gotten up there, it wouldn't have
2 gone up the street, right?

3 A. I'm assuming not. I mean, I -- there
4 was no conversation either way. I was never privy that we
5 weren't going to move up there.

6 MR. FLEMER: Let's take a break, maybe
7 we're done here.

8 (THEREUPON, A SHORT RECESS WAS TAKEN).

9 BY MR. FLEMER:

10 Q. Mr. Huser, were you involved in LPE
11 certification for your store?

12 A. Yes.

13 Q. Before that process started -- when you
14 first got into this building, it was a mess, wasn't it?

15 A. Correct.

16 Q. I mean, there were pieces hanging off
17 the building?

18 A. Correct.

19 Q. Structural pieces of -- I don't know
20 what it was, siding or what it was. But literally the thing
21 was falling apart, wasn't that right?

22 A. Yes.

23 Q. And the Reichert group, Kenwood Dealer
24 Group, got a pass, initially, on the facilities piece of the
25 thing, to get an LPE certification, just passed the whole

00062

1 issue, which otherwise would have been a part of the LPE
2 requirements; isn't that true?

3 A. That's offered to every single Lincoln
4 Mercury dealer, yes.

5 Q. Okay. Well, you guys got one and you
6 needed it bad, isn't that true? Looking at that building,
7 there's no way that would have passed.

8 A. That's correct.

9 Q. All right. And do you recall a meeting
10 where there was discussions about having the requirements
11 relating to the Star system waived for you guys?

12 A. No.

13 Q. Was there anybody that requested a
14 written waiver of the Star system piece of that process?

15 A. No.

16 Q. Didn't you do that?

17 A. No.

18 Q. Was Mr. Woodall at that meeting?

19 A. I never requested it. I don't know what
20 meeting you're talking about. All my managers have always
21 been above the certification level. Why would I need a
22 pass?

23 Q. Okay. What request, if any, did you
24 make when there were discussions about LPE certification and
25 how to get through that with this new building? Did you

00063

1 make any requests at all?

2 A. Would you like me to explain the process
3 on the building?

4 Q. Yes.

5 A. Because there was no meeting with
6 Lincoln Mercury. They were not involved.

7 The way you get a waiver on the facility
8 is to go on to the LPE website, apply for a waiver, and the
9 stipulation, which we met at that time, was that you had to
10 be in the process of renovating the facility, which we were.

11 Q. So there wasn't any independent meeting
12 on this subject?

13 A. No.

14 Q. So you just went on the website and
15 plugged in the information?

16 A. Correct.

17 Q. And then from there you went --

18 A. You submit an application, and you had
19 to actually submit plans and a time line and what you were
20 doing with the facility.

21 Q. And did you input data?

22 A. Yes.

23 Q. Was that your own personal task?

24 A. Yes.

25 Q. Okay. Did you have discussions or

00064

1 consultation with anybody as you put that information in the
2 computer?

3 A. No. I mean, it's pretty, pretty
4 self-explanatory.

5 Q. Just fill in the blocks or fill in the
6 boxes type of thing?

7 A. Yes, yes.

8 Q. Okay. Was there a meeting at district
9 council where you expressed concerns about this process to
10 Jerry Carter?

11 A. Not about the facility, no.

12 Q. Okay. Did you express other concerns to
13 Jerry Carter at a district council meeting at some point?

14 A. Yes.

15 Q. Can you tell me when that was and what
16 concerns you expressed?

17 A. When it was, I can't remember the date
18 of the meeting.

19 Q. Did it happen more than once?

20 A. No.

21 Q. Okay. So we know that there was one
22 meeting?

23 A. One council meeting, correct.

24 Q. District council?

25 A. Yes.

00065

1 Q. And you had concerns to bring to Jerry's
2 attention?

3 A. No, I didn't bring it up. I actually
4 asked a question.

5 Q. What was it?

6 A. The question was: In the certification
7 process, not the facility but the actual other -- there's
8 two parts, there's an image and there's the actual
9 certification.

10 Q. Okay.

11 A. Was all the items that were going to be
12 addressed for the evaluations going to be clearly posted on
13 the website, because I had failed, for the customer
14 satisfaction portion of it, for an item that there's no --
15 it's not written anywhere, but it's something that's going
16 to be tested.

17 Q. And --

18 A. And so my question was: For next year's
19 certification, are there going to be any other items that
20 aren't listed that we have to do, or are they going to
21 change it, which they actually still have never changed the
22 website for that particular item.

23 Q. And what was his answer?

24 A. His -- I believe his answer was that he
25 wasn't aware of any, any items that aren't addressed.

00066

1 Q. Did you have any communications with
2 Warren Gardis about the LPE problem?

3 A. The LPE problem?

4 Q. Well, the certification process, let's
5 be general with this.

6 A. I probably spoke to everybody. I mean,
7 when you fail for something that's -- you have to understand
8 this website. There's -- it's not the easiest to use
9 website and there's 50 million different doors that you can
10 (indicating), you know, go in. And I was basically trying
11 to find somebody at Lincoln Mercury that could show me on
12 the website where that particular item was addressed.

13 Q. Why did you go to Warren Gardis?

14 A. I don't remember going to Warren Gardis.
15 I said I probably spoke to everybody at the Lincoln Mercury
16 Region Office.

17 Q. So you might have gone to Mr. Gardis,
18 but you're not sure?

19 A. I probably did. Because, like I said, I
20 was trying to find someone at Lincoln Mercury that had
21 knowledge of where that particular item would be.

22 Q. And what was the item that you were
23 looking for?

24 A. You could miss -- and I don't even know
25 the math now -- miss three. They pull ten deal jackets and

00067

1 they check to see if you scheduled oil appointments. And
2 you can miss three. Well, and I don't even, to this day,
3 know that it's a fact because, once again, it's not in
4 writing anywhere. You could miss three, and we missed four
5 during our certification.

6 Q. So what was it that you were trying to
7 identify on the website? I mean, you know what happened.

8 A. I was trying to find somewhere where it
9 said we're going to check oil appointments and you're only
10 allowed to miss three. You have to have 70 percent of the
11 oil appointments scheduled.

12 Q. And did either Mr. Gardis or somebody at
13 the regional office help you find where that was?

14 A. It --

15 Q. Or nobody found it because it wasn't
16 there?

17 A. It doesn't exist.

18 Q. Okay. Did you have any questions for
19 regional personnel about members of your sales personnel
20 that weren't certified?

21 A. No.

22 Q. That subject was never investigated by
23 you or questioned?

24 A. My sales personnel has (sic) always been
25 above the level being certified. Since you keep harping on

00068

1 this, somebody has me mistaken, possibly with one of my
2 other two stores. It wasn't me.

3 Q. And what is the level that you need to
4 have your salespeople certified beyond?

5 A. Seventy-five percent.

6 Q. Of the head count; is that right?

7 A. Correct, adjusting for new hires. If I
8 hired someone today and the program ended tomorrow, they
9 would get, you know, I believe a 180-day period that they
10 don't count in the mix.

11 Q. Do you remember if either of your peers
12 from the other stores had questions on that subject?

13 A. I don't know. I'm not involved in the
14 other stores.

15 Q. Well, I know you don't work at the other
16 stores, but I'm just wondering how much information -- I
17 mean, you know, this would be an issue that might come up in
18 conversation, either with your boss or among your peers. I
19 mean, they've already testified, and I'll represent to you
20 that they were aware that your store didn't pass the first
21 time, so --

22 A. Were they aware why I didn't pass?

23 Q. Yes. As a matter of fact, they were
24 able to testify.

25 A. All right.

00069

1 Q. To some extent, I mean, you know, they
2 knew essentially what happened and that you had an issue
3 that, you know, wasn't sufficient to get you passed.

4 A. Uh-huh.

5 Q. But anyway, knowing that there was some
6 communication, I can only ask you, as I'm doing, to shed as
7 much light on the process that you know about as I can.

8 A. Which I've just done.

9 Q. Okay. Do you recall, at the district
10 meeting, I'm going back to that for a second, whether you
11 asked Mr. Carter for some confirmation in writing?

12 A. I believe I said when will we see it in
13 writing, when is it going to be on the website?

14 Q. And what was his answer to that?

15 A. He still insisted that there was nothing
16 that wasn't clear on the website about the certification
17 process.

18 Q. Do you remember raising any other
19 concerns at that meeting about the LPE program and how it
20 would work in practice?

21 A. I don't recall anything else.

22 Q. Were there any discussions or references
23 made to, well, you know, could I be subjected to
24 charge-backs if something happens in this program and it
25 turns out that I wasn't certified and we got money through

00070

1 the program and we'd have to give it back?

2 A. No, there is -- I'm not aware of any
3 charge-backs in the program. You're either certified or --
4 the only thing that decertifies you is not -- like
5 April 30th is the cut-off date for the 2002 program. If
6 all -- if 75 percent of your sales staff or 75 percent of
7 your managers are not certified by April 30th, you can be
8 decertified.

9 Q. And then you would potentially -- I
10 guess one could wonder whether you would be subjected to
11 paying back any funds that were received through the
12 program.

13 A. I don't believe you pay back. You
14 become decertified and don't get funds from that point
15 forward. You don't get charged back for what you've already
16 earned. And I don't know, because 100 percent of my
17 managers and 100 percent of my salespeople are certified.
18 I'm not concerned about that portion of the program. They
19 have been for quite a few months.

20 Q. Do you recall Mr. Carter offering to
21 talk with you about any specific issues at your store after
22 the meeting?

23 A. I don't recall that being the case.

24 Q. I'm not asking you if it happened, I'm
25 asking if he offered to do that?

00071

1 A. I don't recall if he offered to do that.

2 Q. Okay. Do you recall if anybody else

3 suggested that you talk to Jerry after the meeting?

4 A. I definitely don't recall that.

5 Q. Has your store ever been -- I think I
6 might have asked this. But again, you're No. 3 in the chair
7 today, so I apologize if we've already hit this: Has your
8 dealership ever been involved in the warranty counseling
9 process?

10 A. Yes.

11 Q. Okay. And under what circumstances has
12 that occurred?

13 A. One time, probably, and I'm not sure how
14 long, possibly a year and a half, two years ago. They have
15 a, basically a warranty grid in a lot of different areas.
16 And if you -- you know, you should have this many repairs
17 per thousand for glass, and ours are 0.5. And once again,
18 without looking at the actual sheets, I wouldn't know the
19 exact numbers. If you fall into a certain category in some
20 of these, you go into a warranty counseling process, that's
21 kind of a progressive counseling (indicating) on the
22 warranties.

23 Q. And was that the issue, glass repairs?

24 A. I don't recall what the particular issue
25 in our store was.

00072

1 Q. How long were you in the process,
2 counseling process?

3 A. Maybe, between the whole process, a
4 month to two months.

5 Q. And what did it consist of?

6 A. A self-review is the first step.
7 There's working with the service manager, you know, for Ford
8 Division, looking at some items and then actually having an
9 auditor come in and do a warranty review, or a warranty RO
10 review, repair order review, for those particular areas, and
11 see why you might possibly be high in those areas.

12 Q. And what was learned from doing that?

13 A. I don't even -- well, the only thing I
14 recall is that, in his review, he actually said that our
15 warranty clerk probably was leaving warranty dollars on the
16 table, not applying for enough on certain areas.

17 Q. Did he suggest what to do, how to change
18 it?

19 A. Not specifically. They probably weren't
20 going to give us a class on how to take more money from
21 them.

22 Q. Did you have any assistance from the
23 region when this process started?

24 A. The Ford Division, service division?

25 Q. Yes, sir.

00073

1 A. Yes, from -- there might have been
2 assistance from the team leader service manager.

3 Q. Who would that have been?

4 A. To be honest, I don't recall. It was
5 probably Tim Gilbert or George Castalli. George, probably.
6 It was before Tim Gilbert.

7 Q. And what kind of assistance did George
8 bring?

9 A. He explained the process.

10 Q. Were you advised when you had
11 successfully completed the counseling? Did you get a letter
12 or something?

13 A. No.

14 Q. How did you know that you were finished
15 with it?

16 A. The gentlemen that was there that day to
17 review, he discussed the results.

18 Q. Do you remember who that was?

19 A. No, I don't.

20 Q. Were there any charge-backs issued?

21 A. I believe there was.

22 Q. How much?

23 A. I don't recall.

24 Q. 1,000 bucks, 5,000 bucks?

25 A. Less than five, more than a thousand.

00074

1 Q. Okay. Do you remember that figure
2 expressed as a percentage of anything?

3 A. No.

4 Q. Are you aware of whether any other
5 dealers in the Cincinnati market area have had warranty
6 review issues or warranty audits?

7 A. No.

8 Q. Did you ever hear of anything in
9 connection with the Eastside Lincoln Mercury dealership --

10 A. No.

11 Q. -- pertaining to warranty experience?

12 A. No.

13 Q. Okay. And is this one instance that
14 you've described to me here in the last few minutes the only
15 time that you've been in the process?

16 A. No, we just went back into it again
17 about a month ago.

18 Q. Under what circumstances?

19 A. I'm not sure which categories. It's
20 fairly easy for a Lincoln Mercury dealer to be in this
21 process.

22 Q. Is there more than one category?

23 A. Yes.

24 Q. Who's running herd on the problem?

25 A. Please?

00075

1 Q. Who is taking care of this? Whose
2 responsibility is it to monitor the process this time
3 around?

4 A. Mine and my service manager's.

5 Q. But you don't know what the issues are?

6 A. Not as of right now, we just got the
7 letter and just started the process.

8 Q. Have you had a visit yet?

9 A. Nope.

10 Q. Is there one scheduled?

11 A. No.

12 Q. You said it's fairly easy to get into
13 the process?

14 A. Uh-huh, for Lincoln Mercury dealers.

15 Q. Why do you say that, or what makes you
16 say that?

17 A. All the dealerships are, Ford and
18 Lincoln Mercury dealerships, are compared together.
19 Actually, two years ago, there was talk that they were going
20 to separate Ford and Lincoln Mercury dealers and make them
21 separate because the glass is a perfect example of why a
22 Lincoln Mercury dealership would be higher, because the
23 glass on some of the Lincoln products is extremely
24 expensive. So if you compare us to a Ford store that's
25 replacing a bunch of Taurus windshields and we're replacing

00076

1 a \$2,000 Town Car windshield, it's going to appear that
2 we're high, but we're really not (indicating).

3 Electrical is another area, probably
4 because there's more wiring in a Town Car than there is in a
5 Tracer or an Escort. So I think it's -- I believe it's
6 common at Lincoln Mercury, at least that's what I was told
7 when we went into it the first time.

8 Q. Who told you that?

9 A. George.

10 Q. Has anybody at customer service division
11 talked to you about other dealerships having similar issues?

12 A. No.

13 Q. Do you know what customer satisfaction
14 ratings your store is expected to hit?

15 A. Yes.

16 Q. What are they?

17 A. What -- let me clarify. What do you
18 mean, what the target is?

19 Q. Yes.

20 A. For the Lincoln -- I mean, clarify what
21 program.

22 Q. For any program where you have a
23 customer service index, --

24 A. Yes.

25 Q. -- do you know what those numbers are?

00077

1 A. Yes.

2 Q. Can you tell me?

3 A. Sixty-five for Lincoln Premier

4 Experience and 60 for Mercury Advantage.

5 Q. And do you know if those are the same

6 targets that all other stores have to hit?

7 A. I believe there's groups nationally, I

8 think. I mean, they call it a group average, so I would

9 assume there's more than one group in the country. I've

10 never asked.

11 Q. And do you know what group your store is

12 in?

13 A. No. It says "group average," it doesn't

14 say Group 1, Group 10.

15 Q. And do you know what influences what

16 group you're in?

17 A. No, I don't.

18 Q. Do you know if the requirements to meet

19 these numbers, or to be at or above group average, are set

20 forth in the consolidator agreement?

21 A. No.

22 Q. You don't know that?

23 A. It's not part of the LPE program.

24 Q. Okay. But you don't know if that's a

25 restriction or a provision in this consolidator agreement,

Huser 4/2/03 page 78

00078

1 per se, do you?

2 A. I'm not aware of the agreement. As I've
3 stated earlier, how would I know if this is a requirement?

4 Q. By discussion, whether you've seen it or
5 not --

6 A. I've already said I haven't discussed
7 the consolidator agreement, so I don't know.

8 MR. FLEMER: Thanks, Mr. Huser. I don't
9 have anymore questions for you.

10 THE WITNESS: Okay.

11 MR. FLEMER: Thanks for coming down.

12 THE WITNESS: You're welcome.

13

14 (ROBERT B. HUSER)

15 (DEPOSITION CONCLUDED)

16

17

18

19

20

21

22

23

24

25

Huser 4/2/03 page 79

00079

1 C E R T I F I C A T E
2 STATE OF OHIO)
) SS
3 COUNTY OF HAMILTON)

4 I, Jill M. Dragon Sandy, the undersigned, a duly
5 qualified and commissioned notary public within and for the
6 State of Ohio, do hereby certify that before the giving of
7 his aforesaid deposition the said ROBERT B. HUSER, was by me
8 first duly sworn to depose the truth, the whole truth, and
9 nothing but the truth; that the foregoing is the deposition
10 given at said time and place by the said ROBERT B. HUSER;
11 that said deposition was taken in all respects pursuant to
12 agreement as to time and place, that said deposition was
13 taken by me in stenotypy and I am neither a relative of, nor
14 attorney for, any of the parties to this cause, nor relative
15 of nor employee of any of their counsel, and have no
16 interest whatever in the result of the action.

17 IN WITNESS WHEREOF, I hereunto set my hand and official
18 seal of office, Cincinnati, Ohio this _____ day
19 of _____, 2003.

20
21

Jill M. Dragon Sandy-Notary Public
My commission expires: January 31, 2005.

22
23
24
25